IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 5081 of 2007

BADOLA BROTHERS
V/S
A.D.J.(FAST TRACK)RAJSAMAND & ANR.

Mr. BL CHOUDHARY, for the appellant / petitioner

Date of Order : 20.9.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the petitioner, and perused the impugned order.

The suit filed by the petitioner-plaintiff was decreed by the learned trial Court, finding the plaintiff to be entitled to the principal amount of Rs.10,415/- alongwith interest. In the judgment the learned trial Court found the 9 bills to be outstanding. The petitioner filed an application under Section 152 CPC before the learned trial Court, contending that the amount of bills found by the learned trial Court comes to Rs.12,415/-, and not Rs.10,415/-, therefore, the decree for Rs.12,415/-, alongwith interest thereon should have been passed, and in view of the fact, that the learned trial Court found the plaintiff entitled to the amount of 9 bills, which total to Rs.12,415/-, granting a decree for Rs.10,415/- is an

accidental error, or clerical mistake, requiring to be corrected under Section 152 CPC.

Learned trial Court has dismissed this application by the impugned order, finding, that the mistake claimed cannot be said to be clerical or arithmetical error, falling within Section 152 CPC.

Assailing the impugned order, learned counsel for the petitioner relied upon a judgment of Hon'ble the Supreme Court, in U.P.S.R.T.C. Vs. Imtiaz Hussain, reported in (2006)1 SCC 380, and that of the Delhi High Court, in LIC of India Vs. Vishnu Mohan Aggarwal, reported in AIR 2000 Delhi 340.

I have gone through those judgments. In my view, the judgment in U.P.S.R.T.C.'s case is rather against the petitioner, and that of LIC's case, does not help the petitioner either.

From the reading of the entire judgment, with respect to which, application under Section 152 has been filed, shows, that no calculations have been given by the learned trial Court about the amounts of the 9 bills, and according to the contention of the petitioner, the record of the entire suit is to be seen over again, the amount of 9 bills is to be checked, the amounts are to be totaled,

and then it should be found out, as to whether the amount of decree is correct or not. In my view, all this exercise is not permissible under Section 152 CPC.

If the petitioner was aggrieved, he should have filed appeal. In that view of the matter, the application under Section 152 has rightly been dismissed by the trial Court.

The writ petition thus, has no force and is dismissed summarily.

(N P GUPTA),J.

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